

1929.
 MAHADEO
 MISSIR
 v.
 RAM
 PRASAD.

purchaser of the property and has failed to establish the right which he claims in the present suit. The suit was accordingly rightly dismissed by the learned Subordinate Judge and I would dismiss this appeal with costs.

WORT, J.—I agree.

S. A. K.

'Appeal dismissed.

REVISIONAL CIVIL.

Before Jwala Prasad, J.

RUDRA NATH TEWARI

v.

BHUVANGA PRASAD SINGH.*

Code of Civil Procedure, 1908 (Act V of 1908), Order XXII, rule 10,—scope of—usufructuary mortgagee purchasing holding in execution of rent decree—application to set aside sale—mortgage, redemption of, during the pendency of proceeding—mortgagee, whether ceases to have interest—devolution of interest, whether there is—mortgagor, whether can be impleaded as a party in place of mortgagee.

If a mortgagee, being a party to a suit or proceeding, ceases to have any interest in the mortgaged property, the mortgagor in whose favour the property is released may apply under Order XXII, rule 10, Code of Civil Procedure, 1908, to be made a party to the proceeding in place of the mortgagee.

Sourindra Mohan Tagore v. Siromoni Debi(1) and *N. C. Macleod v. Kissan Vithal Singh*(2), followed.

Where, however, an usufructuary mortgagee obtained a decree for rent during the currency of the mortgage, and purchased the raiyati holding in execution thereof, and the

*Civil Revision no. 452 of 1928, from an order of Babu J. C. Bose, Subordinate Judge of Purnea, dated the 16th September, 1928.

(1) (1901) I. L. R. 28 Cal. 171. (2) (1906) I. L. R. 30 Bom 250.

judgment-debtor applied for setting aside the sale under Order XXI, rule 90, Code of Civil Procedure, 1908, and during the pendency of that proceeding the mortgage was redeemed and the mortgagee gave up possession of the mortgaged property, held, that the mortgagor had no interest either in the decree or in the property purchased by the mortgagee who did not cease to have an interest after redemption and, therefore, that there was no devolution within the meaning of Order XXII, rule 10, Code of Civil Procedure, 1908, upon the mortgagor, who was, consequently, not a necessary or proper person to be impleaded as a party to the proceeding.

The facts of this case material to this report are stated in the judgment of Jwala Prasad, J.

C. C. Das (with him *Lalmohan Ganguly*), for the petitioners.

Prabhat Chandra Sen and *Harihar Prasad Sinha*, for the opposite party.

JWALA PRASAD, J.—The petitioners are mortgagors. The mortgagee was in possession of the property in lieu of interest and obtained a decree for rent against one Eklal Singh and in execution of that decree purchased the holding of Eklal Singh on the 24th of October, 1918, and obtained delivery of possession in December 1920.

On the 12th August, 1922, Eklal Singh's son, the opposite party in the present case, applied for setting aside the sale under Order XXI, rule 90, of the Civil Procedure Code. During the pendency of the proceeding on the 22nd December, 1922, the petitioners paid off the mortgage and redeemed the property. On the 25th February, 1923, the Munsif disallowed the judgment-debtor's application under Order XXI, rule 90, of the Code, and the matter was taken in appeal to the District Judge. The 25th of May, 1923, was fixed for the hearing of the appeal. On the 20th March, 1923, a petition of compromise was filed in the appeal on behalf of both the parties. By this compromise the judgment-debtor paid off all the dues under the decree with

1924.

RUDEA NATH
TEWARIv.
BHUJANGA
PRASAD
SINGH.

1924.

April, 2.

1924

RUDRA NATH
TEWARI
v.
BHUJANGA
PRASAD
SINGH.

JWALA
PRASAD, J.

costs and the decree-holder agreed to the sale being set aside. The application was ordered to be taken up on the 25th of May, 1923, the date fixed in the appeal. On that day the petitioners applied to be impleaded as respondents in the appeal. On the 10th September, 1923, the lower court disposed of the compromise petition as well as the application of the petitioners. The appeal was directed to be disposed of in terms of the compromise petition, and the application of the petitioners for being impleaded as respondents was rejected.

The petitioners have come to us in revision, and it is contended on their behalf that the Court below ought to have allowed the petitioners to be made parties to the appeal. The ground urged in support of this application is that the petitioners are the proprietors and after redeeming the usufructuary mortgage they came in direct possession of the property with all the accessions thereto. The raiyati interest in the lands in question having been purchased by the mortgagee was an accession to the property to which the petitioners were entitled. The mortgagee-decree-holder ceased to have any interest either in the mortgaged property or in the raiyati interest in the holding in question and consequently he had no right to enter into a compromise with the judgment-debtor, agreeing to have the sale set aside. In support of the application reliance has been placed upon section 146 and Order XXII, rule 10, of the Civil Procedure Code. Section 146 has no application, inasmuch as the petitioners do not claim under the decree-holder. Their title is paramount to that of the mortgagee-decree-holder and they derive no title from the mortgagee. Section 146 of the Code is restricted in its application to an application made "by or against any person claiming under" another. Order XXII, rule 10, is no doubt of wider application and the phrase "devolution of any interest" in that section is not confined in its meaning to "devolution by death", and would include the devolution of interest

on account of succession of anybody who previously had that interest. In *Sourindra Mohan Tagore v. Siromoni Debi*(¹) and *N. C. Macleod v. Kissan Vithal Singh*(²), it was held that where during the pendency of a suit instituted by the manager of an encumbered estate the estate is released from management and restored to the owners, it is open to persons alleging themselves to be owners of the estate, to apply to be made plaintiffs in place of the manager under Order XXII, rule 10. Therefore the mortgagee being a party to a suit or proceeding having ceased to have any interest, the mortgagor in whose favour the property is released may come under Order XXII, rule 10, of the Code and be made a party to the proceeding in place of the mortgagee.

1924.

RUDRA NATH
TEWARI
P.
BHUJANGA
PRASAD
SINGH.

JWALA
PRASAD, J.

The question then is—did the mortgagee in the present case cease to have any interest in the property or in the litigation and did such an interest devolve upon the mortgagors, the petitioners? The decree in question was obtained by the mortgagee for the rent due to him during the currency of the mortgage. The property was purchased at auction in execution of his decree. The application to set aside the sale was made by the judgment-debtor, and the only person interested in the proceeding was the decree-holder auction-purchaser. In this view the mortgagors had no interest either in the decree or in the raiyati interest purchased by the mortgagee. Therefore no interest devolved upon him and he was consequently not a necessary or proper person to be impleaded as a party in the litigation. The question raised by him as to accession and merger cannot be determined in a miscellaneous proceeding instituted under Order XXI, rule 90, of the Civil Procedure Code. It would also seem that the applicants did not come in proper time. The redemption is said to have taken place when the proceeding was pending before the Munsif, and no application was made by them until after the compromise petition was filed. The appeal before the

(1) (1901) I. L. R. 28 Cal. 171.

(2) (1906) I. L. R. 30 Bom. 250.

1924.

RUDRA NATH

TEWARI

v.

BHUJANGA

PRASAD

SINGH.

JWALA

PRASAD, J.

District Judge was about to terminate. The applicants were, therefore, too late to come to Court even if they had any right to do so.

Therefore, I agree with the view taken by the Court below and dismiss this application with costs: two gold mohurs.

Application dismissed.

REVISIONAL CRIMINAL.

Before Jwala Prasad and James, JJ.

JHARI LAL

v.

KING-EMPEROR.*

1929.

March 6, 11.

April 4.

Criminal Procedure Code, 1898 (Act V of 1898), sections 367 and 369—essential parts of judgment prepared long after the delivery of judgment in open court—conviction and sentence, whether can be sustained.

Where the essential parts of the judgment, that is, the statement of points for determination and the reasons for the decision, were not prepared until three weeks after the pronouncement of the judgment in open court, held, that the defect vitiated the conviction and sentence.

Queen-Empress v. Hargobind Singh(1) and *Bandanu Atchayya v. King Emperor*(2), followed.

Damu Senupati v. Sridhar Rajwar(3), referred to.

The facts of the case material to this report are stated in the judgment of James, J.

H. L. Nandkeolyar (with him *Gopal Prasad*), for the petitioner.

*Criminal Revision no. 21 of 1929, from a decision of S. B. Dhavle, Esq., I.C.S., Sessions Judge of Darbhanga, dismissing an appeal from an order of A. B. Petter, Esq., Subdivisional Magistrate of Samastipur, dated the 10th September, 1928.

(1) (1892) I. L. R. 14 All. 242.

(2) (1904) I. L. R. 27 Mad. 237.

(3) (1894) I. L. R. 21 Cal. 121.